

Minutes of Regular Meeting  
Illinois Gaming Board  
April 9, 1991  
Des Plaines, Illinois

The Regular Meeting of the Illinois Gaming Board was held at 10:00 a.m. on April 9, 1991 at 9511 Harrison, Des Plaines, Illinois. The meeting was scheduled by previous action of the Board and notice was duly and timely given to each Board member and to the general public in conformity with Section 2.02 of the Illinois Open Meetings Act.

The following Board members were present: William J. Kunkle, Jr., Chairman; and Members William Chamblin, Robert Gibson, J. Thomas Johnson, and Raymond Niepert, constituting a quorum of the Board.

Also present were Morton E. Friedman, Administrator; Joseph McQuaid, Deputy Administrator for Enforcement; Marcy Wolf, Deputy Administrator for Audit; Donna More, Chief Legal Counsel; Gaming Officer Commanders Larry Doiron, Roger Shiels, Tom Biebel, William Eder; James Nelson, Assistant for Public Affairs and Acting Secretary of the Board; the media and the general public.

The meeting was called to order by Chairman Kunkle at 10:04 a.m. Mr. Nelson acted as Secretary of the meeting.

The first order of business was approval of the minutes of the Board meeting held on January 15, 1991. Member Niepert moved and Member Gibson seconded a motion to accept the minutes as submitted.

The Chairman called for the yeas and nays. The motion was unanimously approved by voice vote.

The next order of business was the appointment of a Secretary to the Board. The Chairman called on the Administrator, Morton E. Friedman.

Mr. Friedman recommended that James A. Nelson, a member of the Gaming Board staff, be appointed as Secretary of the Board. Member Johnson moved and Member Niepert seconded a motion that James Nelson be appointed as Secretary of the Board.

The Chairman called for the yeas and nays. The motion was unanimously approved by voice vote. In announcing the result, Chairman Kunkle noted for the record that the previous Secretary, Mr. Frederick Baird, II had been appointed as the Chief Counsel of the Illinois Department of Conservation and had tendered his resignation as Secretary. The Chairman, on behalf of the Board, congratulated Mr. Baird on his appointment and expressed the Board's appreciation for his services.

The next order of business was a review of the Board's proposed rulemaking. The Chairman called on Mr. Friedman.

Mr. Friedman stated that pursuant to the forty-five (45) day 1st comment period, the Board had received numerous written comments from the public. After staff review, a written summary of the comments was prepared for Board review.

Before recommending any rule changes, Mr. Friedman stated that his focus in rulemaking was to allow a Gaming Enterprise broad discretion in making private

business decisions, while concentrating the regulatory responsibility of the Gaming Board staff on the integrity of the games and the audit process. He said he believed that the staff should not be directly involved in private business decisions.

Mr. Friedman then reviewed the comments received concerning the licensing of suppliers. The comments suggested that the definition of "Supplier" was overboard. After review, Mr. Friedman agreed and, in a proposed rule change, recommended that the licensing of suppliers be limited to suppliers of gaming equipment and supplies. Mr. Friedman stated that going beyond would promote a regulatory nightmare and not achieve a desirable result. He noted, however, that the Board still maintained regulatory authority over the gaming enterprise and key suppliers of the gaming enterprise, and would require that the holder of an Owner's License purchase all goods and services from reputable suppliers. If an Owner did not deal with reputable suppliers, disciplinary action could be taken by the Board.

Mr. Friedman noted that the staff was recommending that the lessor of a docking facility or vessels be added to the definition of gaming supplier.

Mr. Friedman stated that there were numerous minor changes to the proposed rules and referred the members to the written summary of comments.

The Chairman then asked for discussion and recognized Member Johnson.

Member Johnson asked if the rule concerning "Gaming Equipment" should be identified as "Gaming Equipment and Supplies" to more fully allow the rules to track the specific definitional change of gaming equipment that staff was suggesting.

Mr. Friedman agreed that the change should be made.

Member Johnson moved that the title on pages 7 and 14 and elsewhere where appropriate be changed to read "Gaming Equipment/Supplies." Member Gibson seconded the motion.

The Chairman called for the yeas and nays. The motion was approved unanimously.

The Chairman stated that recently there had been news reports of problems in New Jersey concerning the possibility that certain labor unions involved in the gaming industry had ties or associations to organized crime. The Chairman asked for the Administrator's analysis of whether the broad term of "associations" could include whether a labor union was exerting inappropriate control or influence over the gaming enterprise?

Mr. Friedman stated that he was unable to respond specifically to the question at the present time, but would review the matter. Mr. Friedman stated that the Hotel Employees and Restaurant Employees International Union ("the Union"), which was the Union involved in litigation with the Department of Justice, was the same union that had indicated its' intent to organize Illinois riverboat employees. He noted that this Union had been the representative of non-casino employees in New Jersey and that he expected the same would be true in Illinois. Nonetheless, he said that Illinois was still presented with the issue of whether the union should have access to riverboat gaming. Mr. Friedman stated that he had initiated discussions with the Justice Department regarding the matter. Mr. Friedman said that he would provide the Board an update at its next meeting.

The Chairman called for discussion and recognized Member Niepert.

Member Niepert stated that he believed that it would be only a matter of time before attempts would be made to organize casino employees and asked that the Administrator review that possibility.

Member Gibson noted that casino employees in Nevada were not members of a union, but of an association.

Member Niepert responded that regardless of what term was used, the casino employees had been picketing various Nevada casinos last Spring.

Mr. Friedman responded that he would review the situation and report back to the Board. He further noted that there were limits to effective regulatory authority and that he did not feel that the Board had the authority to decide whether an individual could choose to join a union. He noted that under the National Labor Relations Act that the choice was left to the individual and regulated by the National Labor Relations Board.

Member Gibson noted that the Department of Justice is not responsible for regulatory aspects of labor unions.

Mr. Friedman agreed and stated that the issue is a matter of collective bargaining rights of workers and, that while there had been some attempt by New Jersey to regulate who union officials were, such efforts were not successful.

Member Niepert stated that he was not suggesting that the Board should have any regulatory authority over the rights of workers to organize, but that he wanted to be sure that the staff would be keeping abreast of union activity and assessing the potential effect on Illinois.

Member Gibson stated that he had read some news accounts that suggested that the Board would have some authority to license a union. He stated that under Illinois law, the Board did not have such authority; that only the National Labor Relations Board had such authority. He also said that workers have a right to democratically choose representation by a union and that the Owners have a responsibility to recognize that action and the union selected. Member Gibson stated that he was confident that the Board's licensing of riverboat employees would provide a major safeguard against infiltration of organized crime into Illinois' gaming industry.

The Chairman agreed with Member Gibson's observations and stated that he had broached the subject due to the amount of press concerning the subject.

Chairman Kunkle asked for additional member comments concerning comments received from first notice rulemaking. There were no further comments.

The next agenda item concerned proposed rulemaking that was being presented for Board approval prior to being filed with the Secretary of State for First Notice. One particular proposed rule dealt with the issue of winter cruising. The Chairman recognized Mr. Friedman.

Mr. Friedman reviewed the instructions issued by the Board at the Special Meeting of January 15, 1991 wherein the staff had been directed to draft a proposed rule that would allow a casino to operate during inclement weather. Mr. Friedman described the content of proposed rule 3000.610, stressing that the Captain, who is licensed by the U.S. Coast Guard, has the responsibility to

determine whether or not the vessel can safely operate. If the Captain determines that the riverboat can not safely leave the dock or must return thereto, the owner must make a report to the Board detailing the reasons for that determination. Mr. Friedman stated that in the event the riverboat could not leave the dock, the gangplank, or its equivalent would be raised for the period of time the dockside excursion took place.

The Chairman called for discussion of the proposal and recognized Member Johnson.

Member Johnson asked whether ingress or egress would be permitted during a dockside excursion.

Mr. Friedman responded that based on the legislative intent of the statute, the rule was drafted to reflect that the boat was not meant to be a "walk-in, walk-out" operation.

Member Gibson noted that certain situations may require that patrons be allowed to exit the riverboat during a scheduled "dockside excursion". He cited the example of a malfunction in the heating system during the winter. Thus, Member Gibson suggested the proposed rule address such occurrences.

Mr. Friedman responded that he did not foresee the situation where an owner would prohibit a patron from leaving under those conditions and suggested that the Board may wish to change the language to allow egress.

Member Johnson moved that the proposed rule be amended so that only ingress of patrons during the period of a dockside excursion would be prohibited. Member Gibson seconded the motion.

The Chairman called for the yeas and nays. The motion was approved unanimously.

The Chairman asked for further questions and recognized Member Niepert.

Member Niepert noted that he believed that the owners should document all dockside excursions according to a standard procedure. The Administrator agreed that documentation was important as an audit record.

The Chairman asked if forms were required to be filed with the proposed rule. Mr. Friedman responded that the Board would require written notification of such action.

The Chairman asked if the Board had authority to take action against an owner who was abusing the dockside excursion rule. Mr. Friedman responded that the Board did have such the authority.

The Chairman recognized Mr. Michael Ficaro, attorney for Rock Island Boat Works.

Mr. Ficaro asked whether the rule contemplated an owner's ability to change the length of a cruise during the winter season. He noted that some owners might wish to shorten the cruise time during certain times of the year.

Mr. Friedman responded that it was not the intention of the staff's proposal to require any particular length of cruise time other than to reflect the statutory maximum cruise limit of four hours. The Chairman suggested that the words "four hours" be deleted to reflect that owners could schedule cruises of shorter duration.

Member Johnson moved that the words, "four (4) hours" be deleted from subsection (c) of rule 3000.610. Member Niepert seconded the motion.

The Chairman called for the yeas and nays. The motion was approved unanimously.

Chairman Kunkle also noted that in subsection (d) of rule 3000.610 the word "bases" should be "basis." Mr. Friedman said that the spelling correction would be made.

The Board also discussed the draft rules relating to casino credit (3000.1150 and 1160). Mr. Friedman stated he first wished to highlight a portion of the proposed rulemaking that resulted in a good deal of discussion between the staff and representatives of the industry. He noted that in the preparation of these proposed rules, the staff had actively sought input from other gaming jurisdictions and the gaming industry. Mr. Friedman stressed, however, that even though staff had already received industry input, the proposed rules would still be subject to the forty-five (45) day comment period.

Mr. Friedman stated that one area of disagreement between staff and the industry was in the area of credit. The proposed rules limit credit instruments to the cashing of personal checks, bank cards and the advance deposit of cash by a patron. The rules would seek to prohibit a casino from initiating its own system of credit for patrons. Mr. Friedman noted that one of the groups involved in the discussions, the Fitzgeralds Group, had submitted their position regarding credit in writing and had also agreed to appear before the Board to present their view point. Mr. Friedman asked leave of the Board to hear from Mr. Phillip D. Griffith, President of Fitzgeralds Group. Leave was granted.

Mr. Griffith stated that the business plan submitted with Fitzgeralds Group's application for an owner's license was partially targeted at the "higher budgeted gaming customer." He stated that while he was not advocating the antiquated system of credit that had once been used in Nevada, he was suggesting that owner's be allowed to institute a "hold check" system. Mr. Griffith stated he was proposing four items he felt were needed: the issuance of counter checks; the ability for a patron to buy back a check after play; the ability for a patron to leave money on account with the casino for use at a later date; and hold checks.

Mr. Griffith explained that a hold check system allowed a casino to hold a patron's check upon request for a certain period of time. Mr. Griffith stated that he was proposing that hold checks be allowed in amounts of up to \$1000 and held no longer than eight (8) working days. He added that he was also suggesting that persons not be allowed to present multiple checks. He concluded that this system was necessary if Illinois riverboat casinos were to be able to attract the higher budgeted customer.

Member Johnson asked what the hold periods were in Nevada.

Mr. Griffith responded that generally checks between \$2500 and \$5000 could be held for up to 30 days and that larger amounts could be held for longer periods of time.

Member Johnson asked what dollar volume was not honored at the end of the hold period.

Mr. Griffith responded that generally 1% or less is not honored.

The Chairman recognized Mr. Ficaró, the attorney for the Rock Island group.

Mr. Ficaró stated that he endorsed a system of credit, but that the Board should modify the plan, suggested by Mr. Fitzgerald. He cited Illinois criminal law that prohibits a person from knowingly writing a check for which there are not sufficient funds available. Mr. Ficaró stated that if the Board decided to go forward with a credit mechanism that the mechanism be structured so that a licensee would not be part of committing deception, a Class A misdemeanor.

Mr. Griffith suggested allowing post dating of checks.

Chairman Kunkle stated that Mr. Ficaró was correct and he (Chairman Kunkle) was not convinced that post dating the check would resolve the issue.

Mr. Friedman stated that post dated checks do not represent funds on deposit. He added that he does not see the issue as a Criminal Code issue but rather as a social policy judgement.

Chairman Kunkle asked Mr. Griffith whether he was advocating the pure credit system of Nevada.

Mr. Griffith responded that he was not advocating such a system. He was, however, suggesting a system where persons could gamble greater amounts of money, but with the limitations he had previously discussed.

Chairman Kunkle asked for clarification whether a patron would be given a pink slip or be given credit on the floor and subsequently a marker is created or buy back of marker with winnings.

Mr. Griffith responded that the procedures had not been discussed but he surmised that the procedure would be the same as other jurisdictions.

Chairman Kunkle asked Mr. Friedman if the above situation constituted "credit" as defined in the rules and would therefor be a violation of Board rules. The Chairman clarified that he was not discussing the issue of hold checks, but only the situation where a player has an established line of credit with the casino wherein part of the agreement was that at the end of the session the patron would settle any debt with either a counter check or personal check.

Mr. Friedman responded that the aforementioned scenario would violate the rules as they were currently proposed.

Mr. Friedman stated that he that had additional concerns regarding the credit issue that he wished to bring to the Board's attention. He stated any system of credit would increase the burden on Board staff, especially with respect to junketeers who make credit representations to a casino. He stated that his concern was that the casino would look to the junket operator to make good on the individual debts of the people on his junket. Because junket operators are generally located out of state, this would increase the difficulty of auditing the gaming enterprise.

Chairman Kunkle asked why there would any additional burden on the Board if taxes were collected based on the change in the cash position of the casino regardless of any credit or collection procedures.

Mr. Friedman responded that his question and concern was aimed at whether the parties would adhere to applicable consumer protection laws.

Member Johnson asked whether the rules could prohibit the establishment of credit by junketeers.

Mr. Friedman responded that he had not considered the option.

Chairman Kunkle observed that under the proposed rule and Mr. Griffith's hold check proposal, junketeers would not be permitted to extend credit.

Mr. Friedman agreed with the observation, but noted that an assumption could be made that a junketeer would make a credit representation to a casino and the ability of the junketeer to continue doing business with the casino would rely on the accuracy of the credit representation.

Mr. Griffith stated that most junkets were comprised of people who know one another and that it was not unusual for the organizer to "rate" the participants in the group. Based on that information and checking with other gaming jurisdictions, it would be possible for the casino to establish a credit limit.

Member Johnson asked whether a casino has the ability to seek payment of a bad debt from the organizer.

Mr. Griffith responded that he has never done business in that way.

Member Johnson asked Mr. Friedman if his concern was whether the collection of a debt could include individuals beyond the individual whose credit was established.

Mr. Friedman responded, yes.

Member Johnson asked whether staff concerns could be remedied by changing the rule to prohibit a casino from holding a junket operator responsible for credit or hold checks provided to individuals on the junket.

Mr. Friedman responded that he was unable to provide an answer and suggested that consideration of the proposed rule prohibiting credit be postponed to the next Board meeting at which time staff would present a regulatory scheme which provided for credit.

Chairman Kunkle asked Mr. Griffith whether the issue of allowing hold checks was a critical element to the success of gaming.

Mr. Griffith responded that their business plan was developed to respond to the type of individuals for whom hold checks would be necessary to attract their ongoing patronage and, in that respect, it was important.

Mr. Ficaro added that Rock Island Boat Works was in the position of direct competition with Iowa boats and that flexibility was needed to compete. He noted that the proposal being made was tightly constructed, but allowed the owners to make the choice of whether they would allow hold checks.

Member Johnson moved that proposed rules 3000.1150 (a) and 3000.1160 (a) be stricken and that the staff be directed to present alternatives to the Board. Member Chamblin seconded the motion.

Chairman Kunkle invited discussion on the motion.

Chairman Kunkle asked Member Johnson if the intent of his motion was to instruct staff to limit the concept of repaying a casino that issues loans or allowed hold checks to an eight (8) day limit.

Member Johnson responded that was correct and that in redrafting the credit rule, the staff should take into account any applicable statutory prohibition for accepting a hold check.

Chairman Kunkle stated that it was clear that the staff should not draft a rule that would allow "pure credit."

Member Johnson noted that under the Cigarette Tax Act, cigarette distributors are allowed to post date tax stamp payment checks for three weeks.

Chairman Kunkle then restated the motion allowing the casinos to issue credit and called for the yeas and nays. The motion was approved unanimously.

The next order of business was an open review and discussion of the remaining proposed rulemaking. The Chairman recognized Member Johnson.

Member Johnson first referred to rule 3000.170 and asked why "Board Licensee" was replaced with "Holder of an Owner's License?"

Ms. Donna More, Chief Legal Counsel for the Board, responded that the change was being suggested to have consistency throughout the rules.

Again in reference to rule 3000.170, Member Johnson asked if the Board should review whether any licensee of the Board was paying beyond the fair market value for activities, not just holders of an Owner's License.

Chairman Kunkle reminded the Board that the scope of licensing suppliers had been significantly reduced and placed the responsibility of dealing with reputable individuals on the holder of an Owner's License.

Member Johnson next turned to rule 3000.270 (d) and asked if this subsection was in conflict with rule 3000.280. He noted that the prior prohibited possession of a gaming device while the latter described how an owner could register a gaming device in his possession.

Mr. Friedman responded that there was a problem and suggested that 3000.270 (d) be stricken which would allow 3000.280 to control until appropriate language could be provided to the Board.

Member Johnson moved that the Administrator's recommendation be adopted. The motion was not seconded.

Mr. Friedman suggested that in rule 3000.280 the words "intends to possess" be inserted after the word "who" and that the word "possesses" be stricken.

Member Johnson moved that the Administrator's recommendation be adopted. Member Gibson seconded the motion.

The Chairman called for the yeas and nays. The motion was unanimously approved.



Member Johnson next turned to rule 3000.716 and asked if the amount of \$1,199.99 paid out to a patron was the amount required by the Internal Revenue Service.

Mr. Friedman responded that the amount was accurate and that there was concern within the industry because the practice has been to report such payouts only on electronic devices and not on table games. He further explained that the issue was one of correct collection of income taxes. He noted that Mr. Griffith might wish to comment on the matter.

Mr. Griffith stated that there were federal regulations concerning reporting requirements that had been agreed to between the Internal Revenue Service and the industry. He said that 3000.716 goes beyond federal law and regulation and would be problematic for the owners. He noted that the industry currently reports W-2G and Non-resident and Alien reports as well as several other reports required by federal law and regulation.

Mr. Friedman stated that the intent of the rule was to comply with applicable Internal Revenue Service regulations and that the rule would be redrafted. Mr. Friedman suggested that the Board strike the provisions of 3000.716 and that staff prepare alternative language.

Member Chamblin moved that the Administrator's recommendation be adopted. Member Gibson seconded the motion.

Chairman called for the yeas and nays. The motion was unanimously approved.

Member Johnson next turned to rule 3000.760. He asked if the payout percentage on electronic games of 80% was the regulatory standard in Nevada and Atlantic City.

Mr. Friedman responded that it was.

Member Niepert questioned whether the reference to a maximum payout not exceeding 100% was necessary.

Mr. Friedman responded that if a casino had electronic gaming devices that were paying in excess of 100%, either the owner would go out of business or the owner would steer certain individuals to that machine creating a potential method of skimming profits from a casino.

Member Niepert asked if the standards referred to each machine or all the machines in total.

Mr. Friedman responded each machine was to meet the standard.

Member Johnson next turned to Subpart J of the rules which addressed the issue of liquor licenses. He noted the rule stated "The Illinois Liquor Control Commission shall issue Riverboat liquor licenses to holders of an Owner's License..." He questioned whether the Gaming Board had any authority to require a particular action of another agency of state government.

Mr. Friedman responded that the term "shall" is related to the Liquor Control Act and that the Liquor Control Act controls the issuing of liquor licenses. He went on to explain that the proposed Subpart was an attempt to coordinate efforts with the Liquor Control Commission and avoid duplicating regulatory functions.

Member Johnson next turned to rule 3000.1030 (a). He asked whether the proposed rule allowed patrons to consume alcoholic beverages only during an excursion.

Ms. More responded that subsection (b) of the rule allowed consumption while boarding, but that staff was concerned about owners opening beverage service far ahead of the scheduled excursion time. She also noted that the rule was necessary to allow the Administrator to set the hours of sale and thus avoid potential conflicts with local ordinances which might limit the times when liquor could be sold.

Chairman Kunkle and Member Johnson observed that when subsection (a) and (b) are read independently, they appear to conflict with each other.

Chairman Kunkle suggested that subsection (a) be stricken and subsection (b) become the rule in its entirety. He stated that subsection (b) would cover the necessary regulatory need and that (a) was unneeded. The Administrator agreed.

Member Johnson moved that subsection (a) of rule 3000.1030 be stricken and that the word "(b)" be stricken. Member Gibson seconded the motion.

The Chairman called for the yeas and nays. The motion was unanimously approved.

Member Johnson next turned to rule 3000.1182. Member Johnson asked for an explanation of the rule.

Chairman Kunkle observed that the purpose of the rule was to assure that a casino was required to maintain sufficient cash to pay patrons their winnings.

Mr. Friedman stated that staff believed it essential for the casino to maintain adequate cash to pay patrons and if the cash position of the casino began to deteriorate, the Board could take disciplinary action against the casino for a violation of the rules.

Chairman Kunkle asked if either Nevada or New Jersey had quantified adequate cash amounts.

Mr. Friedman stated that he did not recall.

Chairman Kunkle asked if Mr. Griffith wished to comment on Nevada requirements.

Mr. Griffith responded that during the initial licensing procedures, applicants were required to complete a form related to bank roll issues. This allowed the casino and Nevada authorities to review the cash position but he stated that there was no magic formula that could be used to assure complete accuracy.

Chairman Kunkle asked if the staff could continue work on developing a formula to assure adequate cash reserves.

Mr. Friedman responded that a formula could be developed, but stressed that such a formula would be adjustable, giving the Board a judgment call on a case by case situation. Mr. Friedman stated that the issue was whether the casino was solvent, and that staff needed an avenue to bring potential concerns to the attention of the Board.

Member Johnson had no further questions.

Chairman Kunkle recognized Member Niepert.

Member Niepert turned to rule 3000.240 (f). He asked whether there had been discussion concerning the length of time a temporary occupational identification badge could be effective.

Mr. Friedman responded that the length of time such badges would be effective would depend on the time it would take to receive the results of the fingerprint check required of employees.

Member Niepert observed that there would be a need for some level of standardization.

Mr. Friedman responded that he agreed, but was not able to suggest a standard until sometime in the future.

Member Niepert next turned to rule 3000.760, (b), (9). He asked for an explanation of the words "nonvolatile meters."

Mr. Friedman responded that the term was common to the gaming industry and related to the changing of a number call.

Member Niepert had no further questions.

Member Johnson moved that the Board adopt the proposed rules, as amended on April 9, 1991, including those amendments and changes voted on by the Board during the Regular Meeting of April 9, 1991. Member Chamblin seconded the motion.

The Chairman asked for discussion on the motion and recognized Member Johnson.

Member Johnson clarified the motion indicating that the proposed rulemaking that had already completed the First Notice Comment Period was going to be submitted for Second Notice and that the second set of proposed rulemaking that was reviewed would be filed for the First Notice Period for the purpose of receiving public comment.

Mr. Friedman responded that Member Johnson's clarification was correct.

Chairman Kunkle recognized Mr. Ficaro.

Mr. Ficaro stated that he had concerns regarding rule 3000.110. He stated that he believed that the proposed rule was unconstitutionally vague and did not advise holders of an owner's license with notice of what penalty would be imposed for a violation of the Act or rules. Mr. Ficaro stated that without such notice, a Holder of an Owner's license was at a disadvantage and cited rule 3000.160 as an example. Mr. Ficaro requested the Board adopt standards similar to those in the arena of criminal law.

Chairman Kunkle asked the Administrator if rule 3000.110 was newly proposed and thus subject to public comment under First Notice provisions.

Mr. Friedman responded that the Chairman's observation was incorrect, and noted that both rule 3000.110 and 3000.160 were to be filed under Second Notice provisions. Mr. Friedman stated he wished to offer comments beginning with rule 3000.160, which deals with Owner responsibility to report misconduct. He stated that the reason this rule had been proposed was that in other jurisdictions, when, for example, a dealer had been found cheating, instead of the burdensome

task of discharge procedures and potential litigation, owners simply allowed the dealer to resign. Subsequently, the dealer showed up the next day in another casino which may or may not know the circumstances under which the employee had left the prior employer. Mr. Friedman stated that the promulgation of this particular rule was a protection for the owner and the general public by requiring confidential reports of employee misconduct.

Turning next to rule 3000.110, Mr. Friedman stated that Mr. Ficaro's observations were correct and that staff had intentionally proposed the rule as written. The staff did not recommend specific fines for specific violations because the staff believed that the Board needed the flexibility to take action against an Owner who found it economically acceptable to willfully violate a rule. He noted that the introductory paragraph was nearly identical to other jurisdictions.

Mr. Ficaro stated that regardless of whether other jurisdictions were similar, the holder of an Owner's license had a substantial investment and this rule offered no protection from the possibility of license revocation. He stated the rules should clearly state the grounds under which the Board could revoke a license. Mr. Ficaro noted that owners should not be held accountable to the point of license revocation due to the conduct of an employee.

Mr. Friedman responded that the rule was drafted to protect the public and enhance the authority of the Board. It was not intended to benefit the Holder of an Owner's license. He noted that if an owner was not prepared to accept responsibility for the conduct of employees, that owner did not belong in the gaming business. Mr. Friedman further noted that if an owner did find an employee cheating and took the required action required under rule 3000.160 by reporting the situation, there would be no violation of the rules by the owner.

Mr. Ficaro reiterated that while he had no issue with reporting misconduct of employees, he took issue with an owner facing the possibility of revocation of his license due to the misconduct of the employee.

Chairman Kunkle stated that if the report of the misconduct was made, the rule would be satisfied and no revocation would occur.

The Chairman recognized Mr. George Cowell of Altheimer and Gray, counsel for the Jo Daviess Riverboat Corporation.

Mr. Cowell asked whether portions of the proposed rules were no longer subject to public comment.

Chairman Kunkle responded that those portions of the rules which were being filed under Second Notice provisions had already been through the public comment period.

Mr. Cowell stated that his firm had only recently be retained as counsel and had not been able to submit written comment.

Chairman Kunkle responded that the statutory comment period had expired, that the Board had reviewed the summary of comments received, amended the proposed rules in response to those comments and that those proposed rules would be filed for Second Notice without further public comment. He noted that the second set of proposed rules were to be filed under the First Notice provisions and would be subject to public comment.

The Chairman restated the motion and called for the yeas and nays. The motion was approved unanimously.

The Chairman called for New Business and recognized Member Johnson.

Member Johnson asked if a new rule should be promulgated to empower the Board to not only review changes to the license, but also to approve significant changes. He stated that he had read in the newspapers that some applicants who had been found preliminarily suitable by the Board had announced changes to their operations. Member Johnson questioned the authority of an applicant to change the operation without the Board's approval. Member Johnson cited as an example the Alton Partnership. Alton's application stated that their boat would have a capacity of 2500, but that, according to news accounts, the partnership now had stated its intent to begin operations with a significantly smaller vessel. Member Johnson asked for the Administrator's comments.

Mr. Friedman responded that it was his opinion that the owner had no right whatsoever to deviate from his proposed plan and that the Board held the sole authority to grant permission for the owner to conduct a final practice gaming excursion and that relevant questions would be resolved at that time. He stated that in regard to the Alton situation, that he had discussed the situation with Mr. J. Thomas Long, Managing Partner of Alton Riverboat Gambling Partnership and that he had indicated to Mr. Long that he, personally, had no problem with the efforts of the partnership beginning their operation sooner with a smaller temporary boat, but that the Board would have final approval of any changes to the application.

Member Johnson stated that he was concerned that there was an assumption that Alton would be operational by July 4, 1991 and that the Board would provide whatever approvals were necessary.

Chairman Kunkle interjected that the Board had not made such commitments.

Member Johnson stated that he agreed with the Chairman's position, but he was concerned that the press had given a perception that the Board had made such commitments.

Chairman Kunkle stated that the press should not make such assumptions and that neither should the applicants.

Member Johnson stated that it was his opinion that a substitute boat was unacceptable without a commitment from the owner that the boat that was originally proposed would be operational in a given period of time, and that he had serious problems with any applicant making such significant changes to their original application without the expressed approval of the Board.

Mr. Friedman stated that he agreed with Member Johnson's position and if any applicant had not known of the Board's authority over such matters, such questions would now be clearly answered.

Member Johnson further stated that the Board's decisions were based on the contents of the applications filed and information concerning investments and locations had an effect on how the Board voted. He stated that he believed that any applicant who had deviated from their original application should appear before the Board and present to the Board any proposed changes.

There was no further discussion. The Chairman recognized Member Gibson.

Member Gibson stated that he has been made aware, through press clippings and legislation that had been introduced in the General Assembly, of "the so called secrecy" of the actions of the Board. He stated that he believed the Board should oppose legislation which would require the Board to disclose the reasons an applicant was denied a finding of suitability for licensing. Member Gibson stated that applicants would not want the reasons for denial known and that the Board should take a public stance on the reasons the Board feels that some discussions must take place in Executive Session.

Chairman Kunkle observed that the request for disclosure that had been received was in direct opposition to the Riverboat Gambling Act and the Freedom of Information Act ("FOIA"). He also stated that the Board had been operating in full compliance with these statutes. The Chairman recognized Mr. Friedman for further comment.

Mr. Friedman stated that there was a balance between what was genuinely public information and what was confidential. He stated that beyond the legitimate concerns that had been expressed by applicants, the ability of the staff to access confidential information from a variety of sources would be eliminated and the effect of that would be to destroy the ability of the staff to conduct the comprehensive background investigations that the Board expected of all applicants. Mr. Friedman stated that staff was working with Senator Denny Jacobs and other members of the General Assembly in an attempt to resolve the issue, but that he had severe problems with the contents of bills that had been introduced.

Member Johnson asked whether the current interpretation of the statute was that nothing in an application was subject to disclosure.

Mr. Friedman responded that he believed that there was some statutory discretion whereby the need for confidentiality and the legitimate interests of the press could be reconciled. He noted that pursuant to FOIA, all other licensing files held by the State of Illinois were confidential. Mr. Friedman stated that for reasons he did not fully understand, licensing files under the Riverboat Gambling Act were being singled out as not having the same protections as other licensing files held by the State. Mr. Friedman stated that the staff was in conversation with the bill sponsors to resolve the issue, but that he wanted the Board to understand the direction from which he was working toward a resolution.

Member Johnson asked if all Freedom of Information Requests had been denied.

Mr. Friedman responded that only one request had been received and that it had been denied.

Member Johnson asked if investigatory files that were compiled with respect to an application been requested.

Ms. More responded that the original request filed asked for copies of every record connected with the original ten (10) applications filed for owner's licenses. Subsequently, the request had been narrowed to two specific applications, but again had requested all records.

Member Johnson asked whether any information in an application was subject to disclosure.

Ms. More responded that the Board routinely disclosed the names of the investors, the location of the proposed site, and the names of the attorneys representing the applicant. In addition, minutes of all Board meetings or transcripts were available to the public upon request.

Member Johnson suggested that the Board establish a policy of what was currently available because clearly the Board had been releasing certain information.

Mr. Friedman suggested that the staff prepare a rule for the Board's consideration.

Member Johnson agreed to the suggestion and stated that what had been reported in the press and the actual practice of the Board were two different things and the press reports were not representative of the Board's practices. He continued that background information and certain financial information about an investor should be privileged as a matter of public policy. However, disclosure of information concerning the total investment of the operation to be implemented and other financial information should be a policy matter determined by the Board.

Chairman Kunkle observed that the owners themselves had presented public presentations at previous meetings that had included brochures and video tapes. He suggested that the owners themselves be more responsive to the media.

Member Johnson stated that he had read editorials which indicated that the editorial writers did not know what the existing practice of the Board was regarding the release of information.

Chairman Kunkle responded that it was the practice of the Board to follow the law and that those who had contacted him, the Administrator and the Chief Legal Counsel were made aware of the law, but had chosen to ignore the fact that the Board was in compliance with the law when they wrote the editorials.

There was no further discussion. Chairman Kunkle next recognized Mr. Ficaro.

Mr. Ficaro stated that during a previous meeting with the staff, Rock Island Boatworks had requested that the game Big 6 be included in the regulatory list of games available to be played. He stated the staff had suggested that the request be presented to the Board. He noted that Big 6 was a common casino game.

Mr. Friedman responded that Mr. Ficaro make his request as a written comment to the rules and that the Board delay consideration of the request.

Member Johnson asked what was the staff's estimate for presenting round two license investigations to the Board.

Mr. Friedman responded that he believed the presentations would be made by August, 1991 and that if staff could be in a position to present them sooner, they would do so. He stated that the staff's first priority had been to concentrate on preparing the proposed rulemaking and getting first round boats operational.

Member Johnson suggested to the Chair that he believed it appropriate that as the applicants were implementing their plans that the Administrator make a report to the Board as a regular agenda item concerning the status of each applicant. Such a report should include any deviation from the original

application that was approved by the Board. Member Johnson further stated that he believed that the Board should schedule a special meeting with the Alton Partnership to discuss reports of the reduced boat capacity and the rumor that one of the key investors was dropping out of the partnership. Such changes would require Board approval.

Mr. Friedman interjected that the Alton Partnership also needed to submit their internal controls for review 90 days prior to beginning operations.

Member Johnson asked if the internal controls had been submitted.

Mr. Friedman responded that they had not.

Member Johnson asked if the announced July 4, 1991 was not less than 90 days away.

Mr. Friedman responded that it was. He stated that he believed the Alton group would understand the Board's concerns and, if the partnership believed it could begin operations in July, that the Board could schedule a Special Meeting for finalizing the application.

Member Johnson stated he wanted to go on record as saying the Alton Riverboat Gambling Partnership had not met the requirements of the regulations because the applicant had not submitted the internal control plans for the review of the Board and that for the applicant to be operational on July 4, 1991 those plans were have to been submitted by April 4, 1991. He said the press and public believed that the applicant was going to be operational in July and that was not going to be the case. He stated that the Board had been doing everything possible to assist getting the boat in the water, but that since the applicant had failed to meet their regulatory responsibilities it would be impossible for them to meet their own deadline. Member Johnson wanted to stress that the Board should not be held as a target for blame for what is beyond the Board's ability to control. Member Johnson stated that the applicant should appear before the Board so that the Board and the public can be informed of the status of their operations and can be held responsible for their actions.

There was no further discussion.

The Chairman asked for further new business. There being none, Member Gibson moved that the Board stand adjourned. Member Chamblin seconded the motion.

The Chairman called for the yeas and nays. The motion was approved unanimously and the Board adjourned at 12:19 p.m.

Respectfully submitted,

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James A. Nelson  
Secretary

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